

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WARREN BERES, <i>et al.</i> ,)	
)	
Plaintiffs,)	Nos. 03-785L, 04-1456L, 04-1457L,
)	04-1458L, 04-1459L, 04-1463L, 04-
v.)	1465L, 04-1466L, 04-1467L, 04-
)	1468L, 04-1469L, 04-1471L, 04-
UNITED STATES,)	1472L, 04-1473L, 04-1474L
)	
Defendant.)	The Honorable Marian Blank Horn
)	
)	
)	

DECLARATION OF CLIFFORD SCHROEDER

I, Clifford Schroeder, make the following declaration:

1. I am a United States citizen, a resident of the State of Washington, over the age of twenty-one, have personal knowledge of the facts stated herein and am competent to testify to the matters stated in this Declaration. I and my wife Kathryn are Plaintiffs in this case.

2. I am the owner, president and general manager of a road construction business, a family business I have been engaged in for over 50 years. I am familiar with measuring and working in and around street, highway and railroad right of ways.

3. I and my wife purchased our property at issue in this case in 1974. We purchased the property from Mr. and Mrs. William Williams who appeared to have made no use of the property.

Declaration of Clifford Schroeder 1

4. At the time of our purchase, within the railroad right of way on the west side of the tracks, there was a roadway that serviced several lots to the north, our lot and one lot to the south. Our property including the adjacent railroad right of way relatively wet and had sparse vegetation.

5. Beginning in 1974, we cleared the property including the railroad right of way of all vegetation and brought in rock to create a solid foundation for our home and yard. A neighbor to the north claimed that he owned the roadway on the railroad right of way as it crossed his property and that he didn't want me to bring rock down that roadway. So, we put in a driveway that goes from our property directly east to East Lake Sammamish Parkway.

6. Along the eastern side of the railroad right of way, there was a substantial gully approximately twenty feet deep that extended along the right of way for several houses to the north and one house to the south of our lot. In the late 1970s, one night we discovered a car that had been driven into the gully and was lying upside down with a woman inside screaming. We rescued the woman from her car and we realized that the gully along the right of way was a hazard. Thereafter, still in the late 1970s, we had the area filled in so that it is level with the railroad. Shortly thereafter, we installed a sprinkler system on both sides of the railroad track within the railroad right of way. We planted Sequoia, Pine, Fir, Blue Spruce and several apple trees. We also planted Rhododendrum plants in the railroad right of way and landscaped with a dry creek bed, a wandering path of stones. Attached here to as Exhibit A is a true and correct copy of a photograph of the railroad right

of way showing a Rhodendrum plant that we planted and an apple tree in the background. Also shown in Exhibit A are the railroad tracks. This picture was likely taken in the 1980s or early to mid 1990s.

7. Attached hereto as Exhibit B is a true and correct copy of an aerial photograph depicting our property. This photograph was taken prior to 1985 because the boat shown on the right side of the dock was sold in 1985 and replaced with a different boat that is not in the picture. Toward the back of the picture, East Lake Sammamish Parkway can be seen. On the right side of the picture the driveway that connects our home to East Lake Sammamish Parkway is visible. The trees that are between our house and the Parkway are all trees that we planted on both sides of the railroad right of way in the late 1970s because we cleared the entire site, including the railroad right of way in the early to mid-1970s.

8. The photograph also shows an area of the railroad right of way which we paved with asphalt in the late 1970s and that asphalt as remained and been used for driving and parking to this day. The photograph also shows on the left hand side a hedge and a garden just to the right of that hedge. We have used that area for a vegetable and flower garden with raised beds and fences every year for over the last 40 years. Just west of the garden beds is our septic drainfield with lawn that we have mowed regularly every year from 1974 to the present. With the exception of that garden area and the area covered with asphalt, the remainder of the railroad right of way has been maintained by my wife and me to create a park-like setting.

In fact, when the County's trail planners referred to our property, they would refer to it as the "arboretum section" of the railroad right of way.

9. We maintained the trees and bushes in the railroad right of way by watering, mulching, trimming and weeding the area every year since they were first planted in the 1970s. We remove dead and fallen limbs. We pick and use fruit off the apple trees.

10. Attached hereto as Exhibit C is a true and correct copy of an aerial photograph taken in the late 1990s or early 2000s. It shows how the trees have grown and more clearly depicts the area on the north side where we have had a vegetable and flower garden.

11. Basically, we have used and possessed the entire railroad right of way from mid to late 1970s to the present with placement of asphalt for the driveway and all other areas of the right of way used for gardening or landscaping, with constant maintenance and visible sprinkler structures. Our activities and permanent improvements should make clear to any passerby that someone is treating the property as their own and that someone is me and my wife.

12. Prior to 1998, no one has ever approached me to suggest that they are really the owner of the railroad right of way adjoining our property. Only King County has made that claim and only after 1998.

13. I also understand that the recorded easement for the railroad right of way is west of where the railroad line was actually built. To my knowledge there has never been a railroad operating west of where the railroad operated since we purchased

our property in 1974. The legal description of that easement must be a mistake and abandoned by the railroad because the railroad was not built in that location.

14. For as long as we lived on the property, the railroad operated a train on a very limited basis, typically only three trains per week. The railroad never came into the area that we were using for any purpose whatsoever. We were able to use the right of way as described above in a manner which did not interfere with the railroad's use of the right of way.

15. Attached hereto as Exhibit D is a copy of a description of our property and areas depicted by our various types of uses which was prepared by ESM Engineers. I met with Eric LaBrie and his assistant at our property on January 4, 2018 and I explained to him what our historical use of the area has been. Exhibit D accurately depicts the location of where we have used the right of way for the last over 40 years.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and was executed by me this 31st day of January, 2018, at Vancouver, WA, Washington.

A handwritten signature in cursive script, appearing to read "Clifford Schroeder", written over a horizontal line.

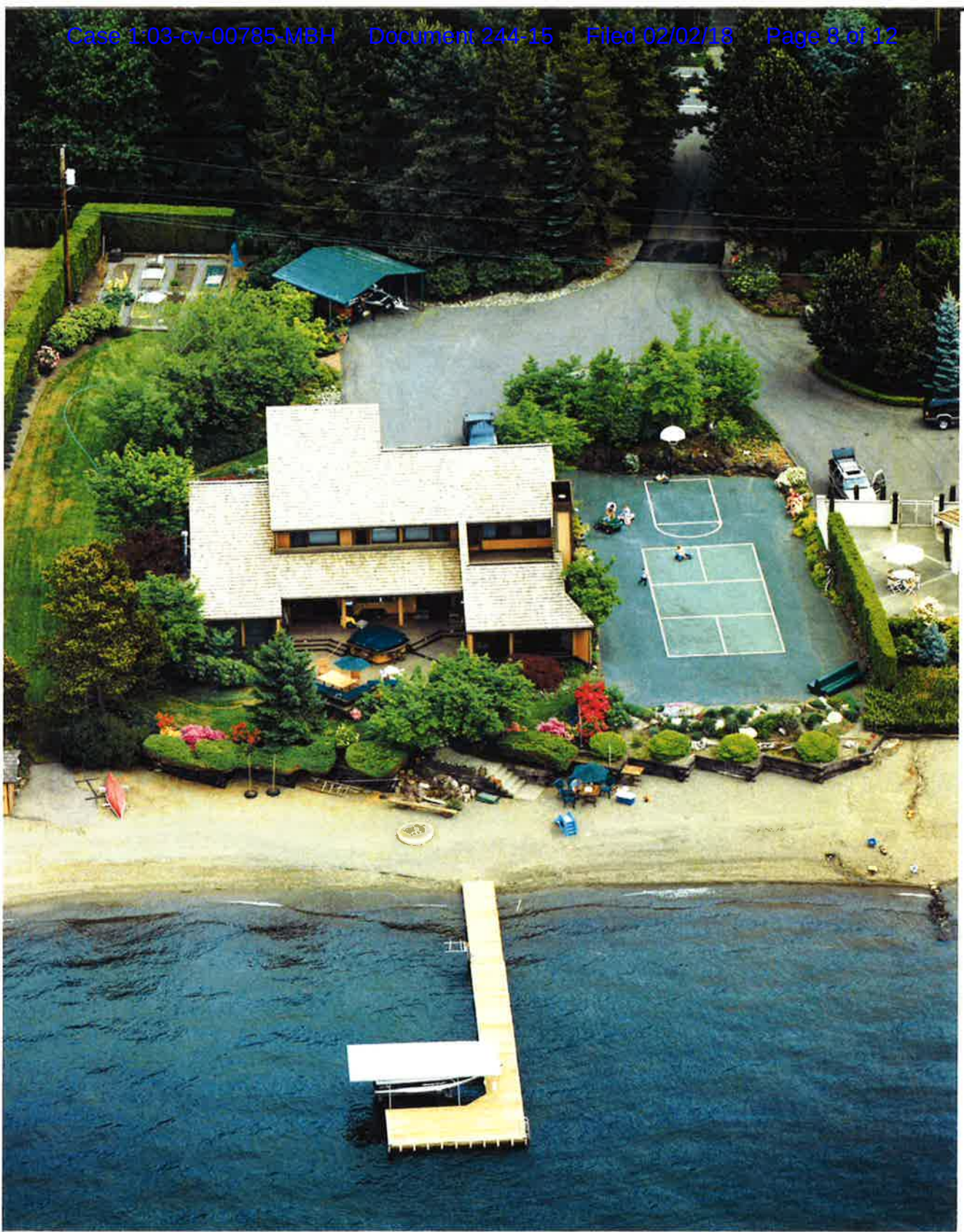
Clifford Schroeder

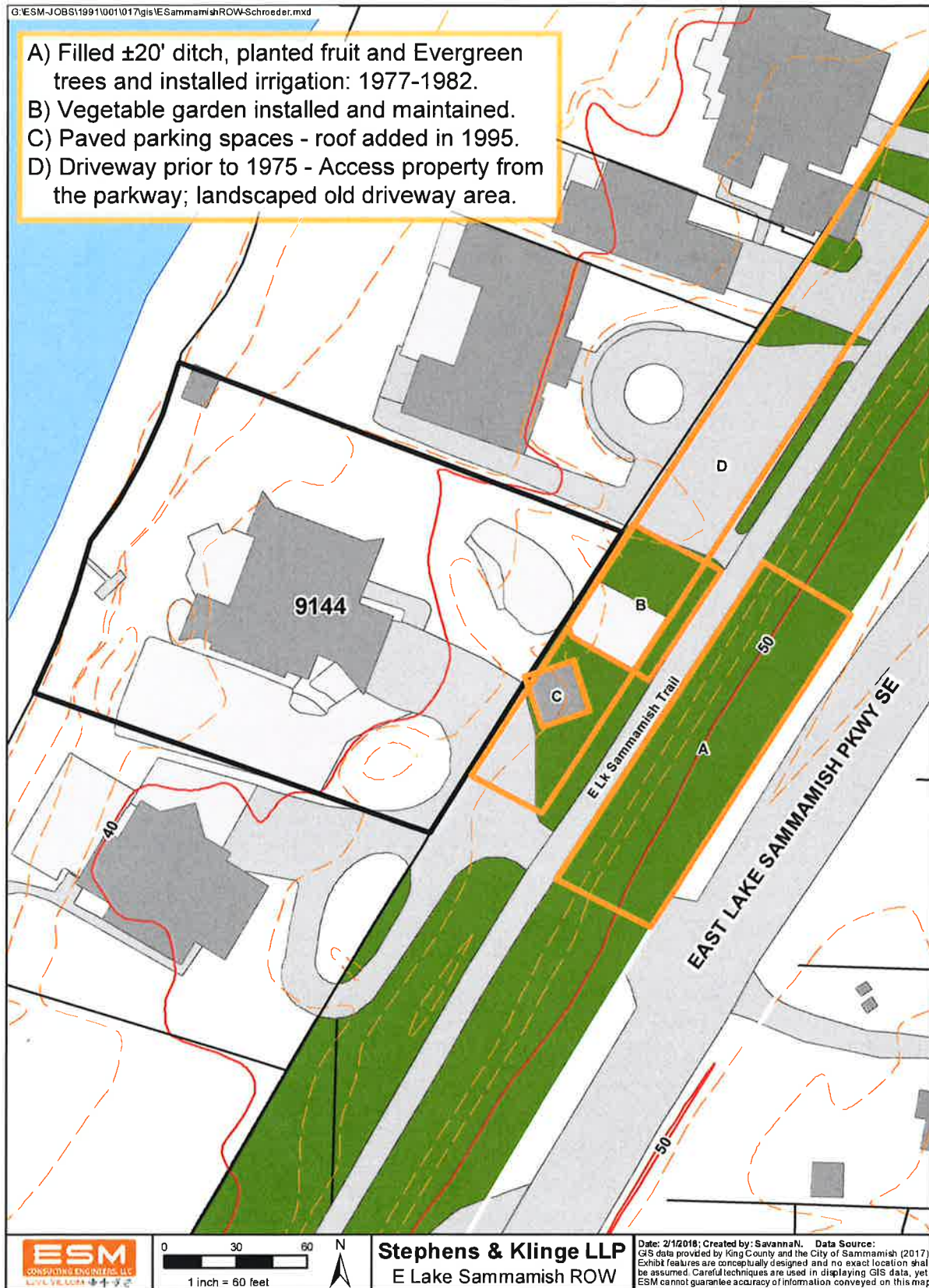


Ex. 9A



Ex. 9B



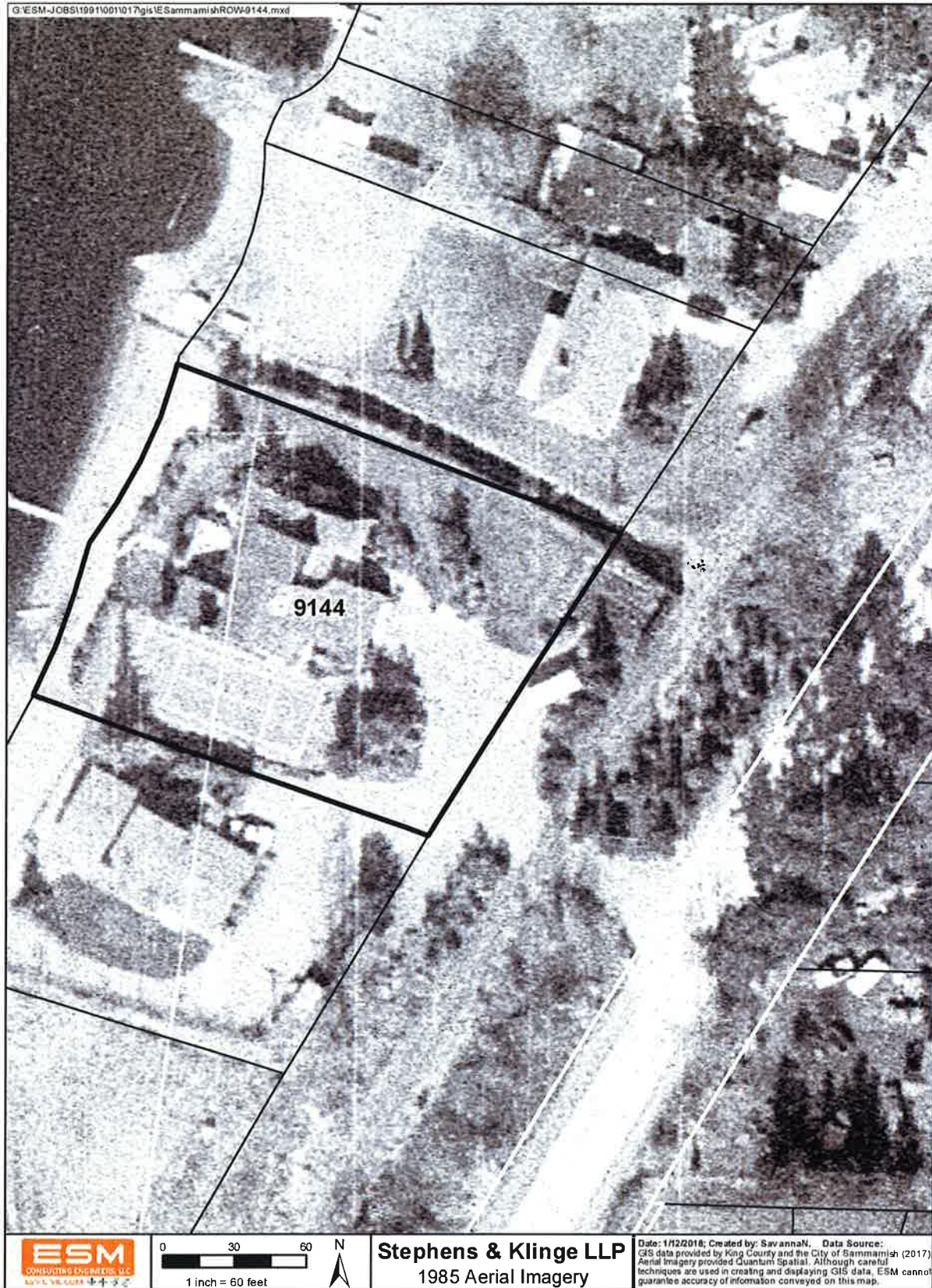




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